

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,
W.A. DREW EDMONDSON, in his
capacity as ATTORNEY GENERAL
OF THE STATE OF OKLAHOMA,
et al.

Plaintiffs,

V.

TYSON FOODS, INC., et al.,

Defendants.

No. 05-CV-329-GKF-SAJ

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FEBRUARY 19, 2008

PRELIMINARY INJUNCTION HEARING

VOLUME I

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

APPEARANCES:

For the Plaintiffs: Mr. Drew Edmondson
Attorney General
Mr. Robert Nance
Mr. Daniel Lennington
Ms. Kelly Hunter Burch
Mr. Trevor Hammons
Assistant Attorneys General
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105

Glen R. Dorrough
UNITED STATES COURT REPORTER

EXHIBIT

A

1 to tell you about his operation, how it's all integrated. And
2 since he has a ranching operation, a poultry operation, and a
3 farm operation, they're all interdependent on one other. And
4 he will talk to you about the decisions he makes with respect
5 to growing chickens. Whether any type of vicarious liability
6 can be imposed on the defendants, we say no, plaintiffs say
7 yes. I've yet to hear the proper theory.

8 THE COURT: Monopsony.

9 MR. RYAN: Monopsony. Well, maybe it is like
10 monopoly, I don't know, Your Honor. But the reality is that
11 these defendants do not control the poultry growers. We don't
12 tell them put the poultry litter on their property. We don't
13 tell them who to sell it to, where to apply it, whether to take
14 it inside the watershed, outside the watershed, to land that's
15 never had fertilizer or not. Those decisions are not made by
16 these defendants.

17 Now, they want an injunction, Your Honor, that seeks
18 to shut everybody down. Doesn't matter whether you've
19 overapplied or not, doesn't matter whether you have a hotspot
20 where bacteria can be shown to get from your farm to the water.
21 I don't think they can show that to any farm. They darned sure
22 haven't shown it to all farms. It would be like -- and I'll
23 say about this weekend, Scott McDaniel recommended this
24 thought, and he said, well, it's as if like Phillips 66, I
25 guess ConocoPhillips now, had 25 gas stations in Oklahoma and

1 science from Stanford University and a law degree from Harvard
2 Law School. After I completed law school, I clerked for Judge
3 Holloway at the Tenth Circuit Court of Appeals. Then I went to
4 Washington, D.C. where I began work as a trial attorney for the
5 Environment and Natural Resources Division of the Justice
6 Department. I worked on a variety of cases there, all across
7 the country, Clean Water Act cases, hazardous waste cases.

8 I then, after a few years, came home and took a job in
9 the attorney general's office in environmental protection here
10 in Oklahoma. After approximately five years in that job where
11 I handled matters all across the state involving landfills and
12 poultry and swine, I took a position with Crowe & Dunlevy in
13 Oklahoma City where I also practice environmental law.

14 Q. How are you currently employed?

15 A. Since 2003, I've been the secretary of the environment for
16 the State of Oklahoma.

17 Q. And by the way when you first came to work for the
18 attorney general, who was the attorney general at that time?

19 A. I believe it was Drew Edmondson.

20 Q. Okay. When you were appointed to your -- current
21 position?

22 A. Yes. When was I appointed to my current position?

23 Q. Yes.

24 A. The governor appointed me shortly after he came into
25 office in January of 2003.

1 Q. What are your duties as secretary of the environment?

2 A. I serve as the natural resource trustee for the State of
3 Oklahoma which means that my job is, under a variety of federal
4 statutes, to assess damage to state natural resources, to
5 collect those damages and to use those damages to repair injury
6 to natural resources. Maybe my most important job is
7 coordinating the different state environmental agencies.

8 Q. As a cabinet secretary?

9 A. Yes.

10 Q. And what agencies are under your supervision or
11 coordination as cabinet secretary for the environment?

12 A. The Department of Environmental Quality, the Water
13 Resources Board, the Conservation Commission. The Department
14 of Agriculture has its own secretary, but it's my job as
15 secretary of the environment to coordinate their environmental
16 activities with those of the other state agencies and, of
17 course, the Scenic Rivers Commission.

18 Q. Okay. In your prior employment with the office of
19 attorney general, did you do any work involving the issues that
20 are present in this case?

21 A. I did.

22 Q. Could you tell us, please, what kind of work that was?

23 A. I worked on questions relating to the control that poultry
24 integrators had over poultry grower operations and their
25 liability then that arose from that. I worked on water quality